



# GOVERNOR'S JUVENILE JUSTICE COMMISSION

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## Statement Related to Wisconsin's Age of Adult Criminal Responsibility

**The Governor's Juvenile Justice Commission supports legislation to adjust the age of original criminal responsibility to the age of 18 years.**

### **Background**

Legislation introduced in the 2007-08 session of the Wisconsin Legislature included language that would have left existing Chapter 938 statutes intact with the exception of increasing the age of adult court jurisdiction to age 18. Statutes related to waiver, adult jurisdiction over certain offenses, and other provisions included in changes made to the 1996 Juvenile Justice code would remain in effect. That legislation did not pass but became the focal point of considerable interest in the child welfare and criminal justice communities.

Given the significance and complexity of this issue and the Commission's role as advisor to the Governor and Legislature on matters related to juvenile justice, the Commission tasked staff from the Office of Justice Assistance to provide additional information to the Commission. This information was presented in the form of discussion papers, for their consideration at the June and September, 2008 Commission meetings. Those documents provided Commission members with information about this issue.

The first Discussion Paper for the June, 2008 meeting included:

- Information about state and national efforts and discussions on this issue, including summaries of the 2008 Legislative Audit Bureau report related to 17-year olds in the adult system, other state's efforts/discussions, and national trends related to jurisdiction.
- A review of research related to the impact of a lower adult court age on public safety and recidivism of youthful offenders
- A review of research related to impacts of adult court on youthful offenders and public attitudes toward adult versus juvenile jurisdiction
- Data related to juvenile crime trends
- Information from advocacy groups related to this issue.

The Supplemental Discussion Paper, prepared for the September 2008 meeting included information related to:

- The possible impacts (fiscal, programmatic, implementation) on local jurisdictions and the Department of Corrections if a change were to be made
- Ways to consider a cost-benefit analysis of making such a change
- The deterrent effect, or lack thereof, of adult court jurisdiction over 17-year olds
- The trends related to imprisonment of 17-year old offenders in Wisconsin
- Other initiatives and potential options related to managing 17-year old offenders
- Variables to consider related to implementing any potential policy change

At the September 11, 2008 Commission meeting, the Commission also received input from a panel consisting of representatives from law enforcement, county human service agencies, and the Wisconsin Council on Children and Families.

## **Primary Considerations**

First, the Commission affirms that the concerns that led to changes in the Juvenile Code in 1996 were based in part on community perceptions that the then existing Children's Code was not sufficient to provide the kinds of processes and outcomes that adequately protected the public from what was an increasing rise in serious juvenile offenses. The Commission takes note of perceptions that the Children's Code was weighted to protect the due process rights of youthful offenders and focused on the rehabilitation of youthful offenders, perhaps to the exclusion of concerns related to safety and victim interests.

Second, the Commission reviewed relevant national and state research related to the effectiveness and ultimate impact on recidivism of handling 17-year olds in the adult system. Of note is the fact that valid research comparing the adult and juvenile systems is relatively limited and can be misleading depending on the methodology. However, the Commission concludes that the majority of valid research related to this issue supports an argument that for many, if not most, youthful offenders the juvenile system is better able to re-direct their behavior to being less likely to reoffend. This is in large part due to greater availability of services in the juvenile system and is perhaps the paramount consideration as it relates to reducing the further likelihood of victimization to the community.

Third, the Commission has placed considerable emphasis on the increasing amount of research related to effective juvenile justice practices. The Commission believes it is incumbent on juvenile justice professionals, regardless of this policy decision, to be cognizant of the state of research related to "evidence-based" and promising practices and transform existing practices to become more consistent with that research.

Fourth, in taking a position on this issue, the Commission places great weight on recent and evolving brain development research that supports the position that for most 17-year olds the necessary decision-making and moderating functions of the brain are still developing. This leads to two conclusions: (1) that although 17-year olds are capable of "telling right from wrong" and capable of committing serious/violent crime(s), it is not necessarily appropriate to consider them "adult-like" for purposes of prosecution and sentencing, and (2) that 17-year olds remain more amenable to effective interventions and behavior change approaches than adults.

Fifth, the Commission is aware that given the current fiscal state of both state and local jurisdictions and agencies, the kinds of staffing, program, and practice changes that would need to be made to accommodate the return of most 17-year olds to juvenile court cannot be absorbed in any meaningful way without a significant infusion of additional resources. This is a significant issue not only for county human service departments that provide the majority of delinquency-related intake, supervision, and placement services but also for a host of system partners as well, including the courts, prosecutors, public defenders, law enforcement at all levels, juvenile detention facilities and jails, the Department of Corrections/Division of Juvenile Corrections, and others. The Commission is aware of the complexity of funding for juvenile delinquency services, particularly as it relates to the important contribution the Youth Aids funding mechanism has made in promoting the development of effective community-based programs for youthful offenders and views this issue as an opportunity to re-visit that relationship and/or funding mechanism(s) as may be appropriate to further encourage strengthening local services. Absent additional investments and an appropriate delivery mechanism, returning 17-year olds to the juvenile system could weaken the system's ability to provide meaningful protection for the community and to provide accountability and successful interventions for youth/families.

Sixth, the Commission is aware of other on-going discussions related to how best to deal with serious youthful offenders, including consideration of other statutory and/or service delivery models that may be effective in ensuring public safety and successfully re-directing those offenders. Given the current attention to this issue, the Commission recognizes that it may be an opportune moment for the legislature and others to consider a range of options that could accomplish those common goals. Therefore, endorsing the return of 17-year olds to juvenile court is not intended to preclude other potential solutions from being considered.

Seventh, the Commission's position takes note of and is consistent with the recommendation made by the Commission on Reducing Racial Disparities (CRRD) to return jurisdiction over 17-year olds to juvenile courts. This is an important recognition of the disparate involvement of minority youth in both the adult and juvenile systems and that this is a critical time to ensure that the most effective interventions possible are available to 17-year olds as a group and minority youth in particular..

Finally, the Commission recognizes that for some youthful offenders and for some offenses current statutes/procedures related to waiver to adult court and original adult court jurisdiction are both necessary and appropriate to adequately protect the public. The Commission affirms that for those cases in which a juvenile offender is subject to waiver to adult court, the courts have the capacity and have demonstrated the ability to appropriately decide which juveniles and which cases merit the longer-term and typically more restrictive interventions of the adult court system.

### **Conclusions and Recommendations:**

The Commission supports legislation that would raise the age of general adult criminal jurisdiction to age 18 as the sole modification to Chapter 938 at this time. The Commission did not address other changes that could be proposed related to adult court jurisdiction over certain serious charges, changes related to waiver provisions and/or standards for waiver to adult court, changes related to the lack of a right to a jury trial, or changes related to current confidentiality statutes. While the Commission has expressed concerns about the age of delinquency jurisdiction including 10-11 year olds and may discuss that issue at a later time, there has been no formal position taken by the Commission related to that component of age jurisdiction.

The Commission endorses a balanced approach to juvenile justice that includes an emphasis on accountability for youthful offenders, safety for the community, and competency development of offenders as equally important goals of the juvenile justice system. The Commission recognizes that for this change to prove effective, those in the juvenile justice system must continue to improve the services they provide, utilizing the best research and strategies available, and must view youth, families, victims, and the community as important customers of the juvenile justice process.

The Commission recommends that that this change be contingent on the provision of sufficient additional fiscal resources to the myriad of local and state entities that would be affected and encourages further discussions by appropriate parties as to how and through what mechanism(s) those additional funds may best be invested to ensure that the result is an increase in appropriate services. The Commission encourages those investments to be made in a way that promotes continued development of community-based services to both prevent juvenile delinquency and intervene effectively once it has occurred.

Although not endorsing any specific proposal, the Commission encourages interested parties to continue a dialogue related to other means by which the mutual goals of community safety and the provision of quality, re-directive services to youthful offenders can be met.